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December 30, 2009

VIA E-MAIL injord@utah.gov and HAND DELIVERY

Utah Department of Transportation
Attn: John Njord, Executive Director
4501 South 2700 West, Box 148220
Salt Lake City, UT 84119

**Re: Notice of Protest Regarding Award
I-15 Corridor Expansion
Project No. MP-I15-6(178)245**

Dear Mr. Njord:

Thank you again for meeting with the FSZ joint venture group to discuss the issues surrounding the pending Notice of Protest Regarding Award ("Protest") which was filed with the Utah Department of Transportation ("UDOT"). We hope that the information shared will be beneficial to your review of the circumstances surrounding the evaluation which ultimately resulted in the signing of the contract with Provo River Constructors ("PRC").

As was made clear in the meeting, FSZ believes that its proposal met or exceeded the criteria requested by UDOT. The FSZ proposal was superior and should have resulted in an award to FSZ.

The Evaluation Teams of UDOT concurred and rated FSZ the highest of all the proposers for the project. FSZ is confident that but for the unexplained actions of the Selection Recommendation Committee ("SRC"), FSZ would have been awarded the project. FSZ remains firm in this position and contends that the SRC violated the review criteria procedures, showed a pattern of bias against the FSZ proposal and violated the covenant of good faith and fair dealing as defined in the terms of the Utah Procurement Code §63G-6-801 et seq. and Utah case law. Consequently, FSZ requests that UDOT cancel or terminate the contract awarded to PRC and award the contract to FSZ.

As a follow up to our meeting, we want to reiterate the position taken in the December 23, 2009 letter from our office. We again assert that UDOT, pursuant to the Instructions to Proposers and Utah Code Annotated § 63G-6-801 et seq., cannot take any further action with respect to the contract and/or the Project until the Protest has been fully resolved. Would you please confirm that UDOT will take no further action with the NTP process until the FSZ protest has been resolved?

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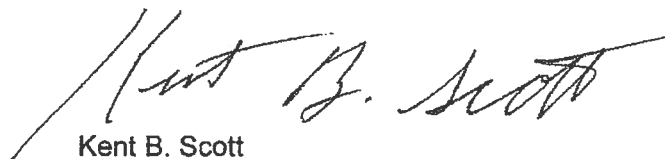
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In our meeting, you stated that the contract had been signed with PRC, but that UDOT had not taken any further action with the contract. The next action that could be taken by UDOT would be the issuance of Notice to Proceed – 1 ("NTP-1"). The date by when the NTP-1 would be issued is January 14, 2010. You indicated that you would be meeting with the UDOT people and the SRC this week to discuss the Protest and the information discussed in our meeting. You further indicated that you would be able to get back with us by the first of next week, well in advance of the NTP-1 issuance date. The FSZ group, in consideration for UDOT taking no further action on the NTP process, will stand down on any further action awaiting your response. With that in mind, if you plan to proceed with the contract by issuing the NTP-1, please provide us with three (3) business days' advance notice. If you are not in agreement with this arrangement, please notify me immediately.

During our meeting of yesterday, your staff members confirmed that they have furnished to FSZ all documents pertaining to the ITP evaluations for FSZ and PRC. Would you please confirm and furnish us with any additional documents that would assist FSZ in evaluating its options for moving forward with its bid protest? Specifically, we are inquiring into whether there are notes, e-mails, memoranda or other written data relating to the scoring means and methods used by the Evaluation Teams, the SRC or others. It is apparent that the SRC changed the scoring of the Evaluation Teams on a consistent basis that ended up being adverse to FSZ – always adverse to FSZ in every single case. It would stand to reason that the SRC kept notes and generated documents relating to these alterations. These items are within the scope of the GRAMMA request we sent to you on December 23, 2009. Would you please double check to see if you have furnished FSZ all of the material documents requested, particularly the SRC's notes and back-up documents generated in the review process?

I have written to you directly as instructed in Kris Peterson's letter of December 23, 2009. If you prefer that communications from this office be directed through your counsel, ReNee Spooner, please advise. We look forward to working with you as the Protest is reviewed and resolved.

Sincerely,
BABCOCK SCOTT & BABCOCK



Kent B. Scott

cc: Terry Poole, FSZ Joint Venture
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